



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,099	05/01/2006	Robert Flournoy Harrold	BH-4	1295
30/901	7590	08/04/2009		
GEORGE S. GRAY				
P.O. BOX 270190				
CORPUS CHRISTI, TX 78427-0190				
EXAMINER				
MYERS, GLENN F				
ART UNIT		PAPER NUMBER		
3652				
MAIL DATE		DELIVERY MODE		
08/04/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/559,099

**Applicant(s)**

HARROLD, ROBERT FLOURNOY

**Examiner**

GLENN MYERS

**Art Unit**

4134

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because in Figure 7 for the last conveyor section shown the head portion is mislabeled "52c". It should be labeled "52e". Also, in Figure 11 the first rail is labeled "12a". It should be labeled "62a". Also, in Figure 13 the 2<sup>nd</sup> end on the far right is labeled "74g". It should be labeled "73h". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7, 11-14, and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blair et al 4,367,865 and in view of Guliana 6,325,203.

4. In Re Claim 1, and 2, Blair '865 teaches A hopper car unloading apparatus for transporting materials discharged through hoppers (Fig. 3, Bottle 24) on a rail hopper car (Fig.3, Bottle Car 22), the car having a first end wheel set (Fig. 3, wheels 38) and a second end wheel set (Fig. 3, wheels 38), the wheel sets (Fig. 3, wheels 38) being positionable on fixed tracks (Fig. 3, Railroad track 25) adjacent the apparatus, the apparatus comprising:  
a movable track member (Fig. 3, Moveable Track Section 32), the track member (Fig. 3, Moveable Track Section 32) being movable from and to an aligned position wherein the track member (Fig. 3, Moveable Track Section 32) is aligned with the fixed tracks (Fig. 3, Railroad track 25) such that the car wheel sets (Fig. 3, wheels 38) are rollable over the track member (Fig. 3, Moveable Track Section 32);

5. Blair '865 does not teach a receiving deck, the receiving deck being movable to and from a receiving position beneath the car for receiving the materials discharged through the hoppers.

6. However, Guliana '203 teaches a receiving deck having a head portion (Fig. 1, Head End 20), in a receiving position beneath the hopper (Fig. 1, hopper 15) for receiving the materials (Fig. 3, Chips 50) discharged through the hoppers (Fig. 1, hopper 15), the receiving deck transporting such received materials from beneath the car for discharge at the head portion (Fig. 1, head end 20),
7. It would have been obvious to one of ordinary skill in the art at the time the invention was made to mount the receiving deck as taught by Guliana '203 to the back of the moveable track section of Blair '865 in order to provide a steady state stream of material coming from the hopper car.
8. In Re Claim 3, Blair '865 teaches a receiving deck (Fig. 1) further comprises at least two conveyor sections (Fig. 1, Hopper Conveyor 10 and Processing Hopper Conveyor 17).
9. In Re Claim 4, Blair '865 teaches the track member further comprises at least two sections (Fig. 4, moveable track 32 each track is a section). Guliana '865 teaches the receiving deck (Fig. 3) further comprises at least two sections (Fig. 3, Hopper Conveyor 10, Processing Hopper Conveyor 17), each track member section (Fig. 4, moveable track 32, each track is a section) cooperating with a receiving deck section (Fig. 3, Hopper Conveyor 10, Processing Hopper Conveyor 17), for coordinated movement between the first and second positions of each, the movement being optionally independent of movement by other track member sections and other receiving deck sections (As discussed in Claim 1 the receiving deck would be mounted

to the moveable track section. Therefore when the moveable track section moves the receiving deck moves.).

10. In Re Claim 5, Guliana '203 teaches each receiving deck section (Fig. 3, Hopper Conveyor 10, Processing Hopper Conveyor 17) further comprises at least two conveyor sections (Column 1, Line 61 - Column 2 Line 4).

11. In Re Claim 6, Guliana '203 teaches a takeaway conveyor (Fig. 1, Processing Hopper Conveyor 17) the takeaway conveyor (Fig. 1, Processing Hopper Conveyor 17) being positioned to receive materials (Fig. 1, Chips 50) discharged at the receiving deck head portion (Fig. 1, Head End 20).

12. In Re Claim 7, Blair '865/Guliana '203 discloses the claimed invention except for a second apparatus. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a second apparatus, since such use of a second apparatus in addition to the first apparatus is just mere duplication of the essential working parts of a device which involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Please note that in the instant application, Fig. 16, applicant has not disclosed any criticality for the claimed limitations. It is also noted that since the receiving sections are adjacent to each other they will discharge to a common take away conveyor (Fig. 1, Takeaway Conveyor 30)

13. Claim 11 is rejected under 35 U.S.C. § 103 (a) as being unpatentable over Blair '865. Blair '865 discloses the track member has a first rail and a second rail, each rail for receiving the car wheel sets

14. However, Blair '865 does not expressly disclose the first rail and second rail being moved closer together when the track member is moved from the first position. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the first rail and second rail of Blair '865 move closer to each other because Applicant has not disclosed that moving the first and second rail closer together provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with consistently spaced rails because the function of the moveable track member would still function to move to and from below the hopper car. Therefore, it would have been an obvious matter of design choice to modify Blair '865 to obtain the invention as specified in claim 11.

15. In Re Claim 12 and 13, Blair '865 teaches a hopper car unloading apparatus for transporting materials discharged through hoppers (Fig. 3, Bottle 24) on a rail hopper car (Fig. 3, Bottle Car 22), the car having a first end wheel set (Fig. 3, wheels 38) and a second end wheel set (Fig. 3, wheels 38), the wheel sets (Fig. 3, wheels 38) being positionable on fixed tracks (Fig. 3, Railroad track 25) adjacent the apparatus, the apparatus comprising: a movable track member (Fig. 3, Moveable Track Section 32); Juliana '203 teaches a receiving deck (Fig. 1) having a head portion (Fig. 1, Head End 20)

16. With regards to the "means for moving the track member from and to an aligned position wherein the track member is aligned with the fixed tracks such that the car

wheel sets are rollable over the track member ” and “means for moving the receiving deck to and from a receiving position beneath the car for receiving the materials discharged through the hoppers, the receiving deck transporting such received materials from beneath the ear for discharge at the head portion, the track member being out of its aligned position when the receiving deck is in the receiving position.”, this limitation meets the three-prong test per MPEP 2181 and thereby invokes 35 USC 112 6<sup>th</sup> paragraph. In the instant specification, page 12, lines 25-34, the said means for moving the moving the track member and the receiving deck is shown in Figs. 8-11, and 19 Hydraulic Power Equipment #93b and Hydraulic Piston 92b, Blair '865 discloses a hydraulic power equipment (Fig. 4, Hydraulic Actuator 48) and Hydraulic Piston (Column 4, Lines 27-31).

17. In Re Claim 14, the combination rejection of claims 1 and 13 applies to Claim 14.

18. Regarding to claims 15-20, under the principles of combination, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be obvious over the prior art device. When the prior art device is an obvious variant of the device described in the specification for carrying out the claimed method, it can be assumed the device would obviously perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986). MPEP 2112.02. As discussed above, the apparatus of Blair '865/Guliana '203 teaches sufficient structure to perform the method of claims 15-20.

19. Claims 8-9 are rejected under 35 U.S.C.103 (a) as being unpatentable over Blair '865/Guliana '203 as applied to claim 2 above and further in view of David '5,370,058.



20. In Re Claims 8 and 9, Blair '865/Guliana '203 as discussed above teaches the apparatus of Claim 2.

21. Blair '865/Guliana '203 does not teach an electronic control station for electronic control of the coordinated movement of the track member and the receiving deck.

22. However David '058 teaches an operator control station (Fig.1, pendant controller 40), from which an operator operates the electronic control (Fig. 1, Pendant Controller 40) of the coordinated movement of on a service track.

23. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a pendent controller operator station with the apparatus of Blair '865 as taught by David '058 in order to enable operation of the system by a single individual, in a safely spaced relation from the movement of the platform and receiving deck.

24. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blair '865/Guliana '203 as applied to Claim 2 above and further in view of Hoffmeister et al 2,754,982.

25. In Re Claim 10, Blair '865/Guliana '203 as discussed above teaches the apparatus of Claim 2.

26. Blair '865/Guliana '203 does not teach a paired hopper railroad car above the receiving deck.

27. However, Hoffmeister '982 teaches a paired hopper railroad car (Fig. 2, car body 13)

28. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a paired hopper railroad car as taught by Hoffmeister '982 instead of the hopper car of Blair '865 in order to expedite discharge of material. The examiner notes that at least part of the receiving deck would be beneath substantially the entire combined length of the paired hoppers while the receiving deck is in the second position.

### ***Conclusion***

29. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Snead et al 4,795,301 discloses a hopper car on a railroad track. De Young 2,251,990 discloses a conveyor unloading apparatus for a hopper car. Lica 3,591,799 discloses moveable train tracks. Mackenzie et al 4,056,202 discloses a bulk material unloading system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GLENN MYERS whose telephone number is (571)270-1160. The examiner can normally be reached on Monday - Friday/7:30AM-5:00PM - 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Nguyen can be reached on 571-272-4491. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GLENN MYERS/  
Examiner, Art Unit 4134

/Khoa D. Huynh/  
Supervisory Patent Examiner, Art Unit 4128